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9
10 **BEFORE THE**
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case Nos. 1H 2009 075

13 DENNIS W. MARTINEZ, R.C.P.
24000 Alicia Pkwy., Suite 17, Box 319
14 Mission Viejo, CA 92691

OAH No.

ACCUSATION

15 Respiratory Care Practitioner License No. 4278,
16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Respiratory Care Board of California (Board),
22 Department of Consumer Affairs.

23 2. On or about June 14, 1985, the Board issued Respiratory Care Practitioner
24 License No. 4278 to DENNIS W. MARTINEZ (Respondent). The Respiratory Care Practitioner
25 License was in full force and effect and all times relevant to the charges brought herein and will
26 expire on June 30, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).”

“...”

7. Section 3752 of the Code states,

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to

1 be a conviction within the meaning of this article. The board shall order the
2 license suspended or revoked, or may decline to issue a license, when the time for
3 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or
4 when an order granting probation is made suspending the imposition of sentence,
5 irrespective of a subsequent order under Section 1203.4 of the Penal Code
6 allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation,
8 information, or indictment.”

9 8. Section 3754 of the Code states: “The board may deny an application for,
10 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions
11 upon, a license in any decision made after a hearing, as provided in Section 3753.”

12 9. California Code of Regulations, title 16, section 1399.370, states, in
13 pertinent part:

14 “For the purposes of denial, suspension, or revocation of a license, a crime
15 or act shall be considered to be substantially related to the qualifications,
16 functions or duties of a respiratory care practitioner, if it evidences present or
17 potential unfitness of a licensee to perform the functions authorized by his or her
18 license or in a manner inconsistent with the public health, safety, or welfare. Such
19 crimes or acts include but are not limited to those involving the following:

20 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
21 abetting the violation of or conspiring to violate any provision or term of the Act.

22 “...

23 (c) Conviction of a crime involving driving under the influence or reckless
24 driving while under the influence.

25 “...”

26 **COST RECOVERY**

27 10. Section 3753.5, subdivision (a) of the Code states:

28 “In any order issued in resolution of a disciplinary proceeding before the

1 board, the board or the administrative law judge may direct any practitioner or
2 applicant found to have committed a violation or violations of law to pay to the
3 board a sum not to exceed the costs of the investigation and prosecution of the
4 case.”

5 11. Section 3753.7 of the Code states:

6 “For purposes of the Respiratory Care Practice Act, costs of prosecution
7 shall include attorney general or other prosecuting attorney fees, expert witness
8 fees, and other administrative, filing, and service fees.”

9 12. Section 3753.1 of the Code states:

10 “(a) An administrative disciplinary decision imposing terms of probation
11 may include, among other things, a requirement that the licensee-probationer pay
12 the monetary costs associated with monitoring the probation.

13 “...”

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Conviction of Crimes Substantially Related to the Qualifications,
16 Functions, or Duties of a Respiratory Care Practitioner)

17 13. Respondent has subjected his Respiratory Care Practitioner License
18 Number 4278 to disciplinary action under section 3750, as defined by section 3750, subdivision
19 (d), and 3752 of the Code, and Title 16 of the California Code of Regulations, section 1399.370,
20 in that Respondent has been convicted of crimes substantially related to the qualifications,
21 functions, or duties of a Respiratory Care Practitioner, as more particularly described in
22 paragraphs 14 through 25, below.

23 **The June 29, 2007 Conviction:**

24 14. On or about October 17, 2006, Respondent was arrested for
25 violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], and Vehicle
26 Code section 23152 (b) [driving with a blood alcohol level of .08% or higher].

27 15. On or about May 8, 2007, Respondent was charged in the case
28 entitled *People of the State of California v. Dennis William Martinez*, San Diego County Superior

1 Court Case No. M017516 with violating Vehicle Code section 23152 (a) [driving under the
2 influence of alcohol], and Vehicle Code section 23152 (b) [driving with a blood alcohol level of
3 .08% or higher].

4 16. On or about June 29, 2007, Respondent pled nolo contendere to a violation
5 of Vehicle Code section 23152 (b) [driving with a blood alcohol level of .08% or higher], in the
6 case entitled *People of the State of California v. Dennis William Martinez*, San Diego County
7 Superior Court Case No. M017516.

8 17. On or about June 29, 2007, the Court sentenced Respondent in Case No.
9 M017516 to five (5) years summary probation with terms and conditions including attendance at a
10 Mothers Against Drunk Driving victim impact panel, completion of a first conviction alcohol
11 program, and a fine of \$1,756.00.

12 **The November 21, 2008 Conviction**

13 18. On or about November 14, 2008, Respondent was arrested for violations
14 of Penal Code section 12021 (a)(1) [felon in possession of a firearm], and Penal Code section 166
15 (a)(4) [disobeying a court order].

16 19. On or about November 18, 2008, Respondent was charged in the case
17 entitled *People of the State of California v. Dennis William Martinez*, Orange County Superior
18 Court Case No. 08SF0911, with violating Penal Code section 12021(a)(1) [felon in possession of
19 a firearm], and Penal Code section 166 (a)(4) [disobeying a court order].

20 20. On or about November 21, 2008, Respondent plead guilty to being a felon
21 in possession of a firearm in violation of Penal Code section 12021 (a)(1).

22 21. On or about November 21, 2008, the Court sentenced Respondent in Case
23 No. 08SF0911 to twelve (12) days in Orange County jail and three (3) years formal probation.

24 **The March 4, 2009 Conviction**

25 22. On or about February 9, 2009, Respondent was arrested for
26 violations of Vehicle Code section 23152 (a) [driving under the influence of alcohol], Vehicle
27 Code section 23152 (b) [driving with a blood alcohol level of .08% or higher], and Vehicle Code
28 section 12500 (a) [driving without holding a valid driver's license].

1 23. On or about February 11, 2009, Respondent was charged in the case
2 entitled *People of the State of California v. Dennis William Martinez*, Orange County Superior
3 Court Case No. 09NM01916 with violating Vehicle Code section 23152 (a) [driving under the
4 influence of alcohol] with a prior conviction, Vehicle Code section 23152 (b) [driving with a
5 blood alcohol level of .08% or higher] with a prior conviction, Vehicle Code section 12500 (a)
6 [driving without holding a valid driver's license] and Vehicle Code section 23103 (a) [reckless
7 driving].

8 24. On or about March 4, 2009, Respondent pled guilty to a violation of
9 Vehicle Code section 23152 (a) [driving under the influence of alcohol] with one prior conviction,
10 in the case entitled *People of the State of California v. Dennis William Martinez*, Orange County
11 Superior Court Case No. 09NM01916.

12 25. On or about March 4, 2009, the Court sentenced Respondent in Case No.
13 09NM01916 to five (5) years informal probation with terms and conditions including attendance
14 at a Mothers Against Drunk Driving victim impact panel, completion of an eighteen (18) month
15 alcohol program, thirty-six (36) days in Orange County Jail, and a fine.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Conviction of a Crime Involving Driving Under the Influence)

18 26. Respondent has further subjected his Respiratory Care Practitioner License
19 Number 4278 to disciplinary action under section 3750, as defined by sections 3750, subdivision
20 (d), and 3752 of the Code, and Title 16 of the California Code of Regulations section 1399.370,
21 subdivision (c), in that he has been convicted of crimes involving driving under the influence of
22 alcohol, as more particularly described in paragraphs 14 through 17, and 22 through 25, above,
23 which are hereby incorporated by reference and realleged as if fully set forth herein.

24 **THIRD CAUSE FOR DISCIPLINE**

25 (Violation of any Provision of the Act)

26 27. Respondent has further subjected his Respiratory Care Practitioner License
27 Number 4278 to disciplinary action under section 3750, as defined by section 3750, subdivision
28 (g), and Title 16 of the California Code of Regulations, section 1399.370, subdivision (a), in that

1 Respondent has violated, or attempted to violate, directly or indirectly, or assisted in or abetted the
2 violation of, or conspired to violate any provision or term of the Act, as more particularly
3 described in paragraphs 14 through 25, above, which are hereby incorporated by reference and
4 realleged as if fully set forth herein

5 **PRAYER**

6 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
7 alleged, and that following the hearing, the Board issue a decision:

8 1. Revoking or suspending Respiratory Care Practitioner License No. 4278,
9 issued to respondent Dennis W. Martinez;

10 2. Directing respondent Dennis W. Martinez to pay the Respiratory Care
11 Board of California the costs of the investigation and enforcement and if placed on probation, the
12 costs of probation monitoring; and

13 3. Taking such other and further action as deemed necessary and proper.
14

15 DATED: June 5, 2009
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17

18 Original signed by Colleen Whitestine for:
19 STEPHANIE NUNEZ
20 Executive Officer
21 Respiratory Care Board of California
22 State of California
23 Complainant
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